

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORIGINAL SIDE

APPEAL NO. 502 OF 2004  
IN  
SUIT NO. 249 OF 1985

The Elphinstone Spinning & Weaving  
Mills Ltd.

Appellant

vs.

M/s.Ramanand Ramprasad

Respondent

Ms. A. Ghone i/b. M/s. Kanga & Co. for the appellant.

Ms. M. V. Thakkar i/b. M/s. Haridas & Co. for the respondent.

CORAM : R.M. LODHA &  
J. P. DEVADHAR, JJ.

Date : 16<sup>h</sup> August 2004

P.C.:

Heard.

2. This appeal is directed against the judgment and decree dated 4<sup>th</sup> November 2003 whereby the learned trial Judge passed a decree in favour of the plaintiff in the sum of Rs. 3,07,391.36 p. with interest at the rate of 12% on the principal amount of Rs. 2,25,353.36 from the date of the suit until realisation. The said decree came to be passed by the learned trial Judge for want of any written statement.

3. The learned counsel for the appellant submitted that written statement was prepared by the advocates for the defendant on 30<sup>th</sup> July 1986 and the advocate wrote to the defendant-appellant to declare the said written statement. Though there was lapse on the part of the defendant-appellant in not declaring the written statement but this was not a case of gross negligence since the written statement in fact was prepared on 30<sup>th</sup> July 1986. The learned counsel submitted that the defendant-appellant is ready and willing to pay the reasonable cost to the plaintiff for the inconvenience caused.

4. On the other hand, the learned counsel for the respondent-plaintiff would respond by contending that the suit was filed by the plaintiff way back in the year 1985 and writ of summons was served upon the appellant immediately thereafter. For more than 18 years, no written statement was filed by the defendant and there was no justification or explanation for the delay. She also submitted that the defendant had admitted its liability vide communication dated 22<sup>nd</sup> June 1983 and since the defendant had no valid defence to contest the suit, invited the decree for want of written statement. Now by putting forth sympathy, the appellant seeks to have the matter reopened and, thus, prolong the matter.

5. We reflected over the matter and, in our considered view, the impugned judgment and decree does not call for any interference.

6. It is not in dispute that the suit was filed in the year 1985 for recovery of the amount of Rs.3,07,391.36 together with interest at the rate of 21% per annum on the principal sum of Rs.2,25,353.36. It is also not in dispute that immediately thereafter the defendant was served and despite service no written statement was filed. The submission that the written statement was got prepared by the defendant's advocate way back on 30<sup>th</sup> July 1986 and, therefore, it was not case of gross negligence cannot be accepted. Rather, it shows the gross and grave negligence on the part of the defendant in not declaring the written statement though its advocates are said to have on 30<sup>th</sup> July 1986 communicated them to declare the written statement. It appears to us that the defendant had no defence as is apparent from the letter dated 22<sup>nd</sup> June 1983. The defendant confirmed that the sum of Rs.2,25,353.36 was due to the plaintiff towards carrying charges subject to deduction of income tax as on 30<sup>th</sup> April 1983. Having admitted their liability vide their communication dated 22<sup>nd</sup> June 1983, the defendants were well aware that they have no justifiable and valid defence to contest the suit. Now, the suit having been decreed for want of written statement, they want to set the clock back by requesting that matter may be remanded back to the trial Judge so that there is further delay in recovering the due amount by the plaintiff from the defendant. This is nothing but dilatory tactics

employed by the defendant.

7. Incidentally, we may notice that the learned counsel for the respondent invited our attention to paragraph 6 of the written statement said to have been prepared by the advocates on 30th July 1986. In paragraph 6 of the draft written statement there is a reference of the defendant having preferred appeal before the Supreme Court and the said appeal having been referred to the Constitution Bench in January 1988. The learned counsel for the respondent submitted that how could a draft written statement said to be prepared in the year 1986 shall have a reference of 1988 in paragraph 6. There is no explanation by the appellant on this aspect. Be that as it may, for the reasons already indicated by us, this aspect is not of much importance.

8. Appeal is, accordingly, dismissed in limine.

(R. M. LODHA, J.)

(J. P. DEVADHAR, J.)